



## Revision of return of income giving effect to the Scheme of arrangement permissible even after the expiry of statutory due date

**The Supreme Court allows revision of return of income by Amalgamated companies to give effect to the Scheme of Arrangement, even though the time limit under section 139(5) of the Income-tax Act, 1961 ('the Act') had lapsed**

### Background

- The taxpayers, Dalmia Power Limited and Dalmia Cement (Bharat) Limited, had filed their original return of income for Assessment Year ('AY') 2016-17 in accordance with the provisions of the Act. Both the taxpayers ('Transferee Companies' or 'taxpayers') had entered into 4 interconnected Schemes of Arrangement ('Schemes') with 9 transferor companies with appointed date as on January 1, 2015. The effective date of the Schemes was October 30, 2018.
- The Schemes contained a specific clause permitting the Transferee Companies to file / revise their returns even if the prescribed time limits for filing or revising such returns have lapsed without incurring any liability on account of interest, penalty or any other sum.
- Pursuant to sanction of Schemes by the National Company Law Tribunal ('NCLT'), the Transferee Companies manually filed the revised returns of income on November 27, 2018 for AY 2016-17. At the time of filing such revised return of income, the due date for filing revised return of income under section 139(5) of the Act (being March 31, 2018 in this case) had already expired. The revised returns were filed after considering the income and tax liability of the transferor companies after giving effect to the Schemes.
- The income-tax department did not accept the revised returns citing absence of specific approval of the Central Board of Direct Taxes ('CBDT') since the prescribed time limit of filing revised return had already lapsed.



- Aggrieved, the Transferee Companies filed writ petitions against the order of department before the High Court of Madras. The Single Judge bench allowed revision of return of income after the due date under section 139(5) of the Act.
- The Single Judge bench held that the department could not override an approved scheme (containing the clause which enabled the taxpayers to file their revised return of income), which has a statutory force, by rejecting the revised return of income filed by the taxpayers.
- The income-tax department filed writ against the order passed by the Single Judge. The Division bench of High Court allowed the writ and reversed the judgment of the Single Judge.
- The Division bench held the clause in the Schemes permitting revision of return of income beyond the due date can only be construed as an enabling clause and it cannot be inferred that the income-tax department had agreed to waive the procedures or statutory requirements prescribed under section 139(5) and 119(2)(b) of the Act in respect of filing of revised returns of income, merely because the aforesaid clause in the scheme permitting revision of return of income was not objected to by the income-tax department.
- Aggrieved by the order of the Division bench, the taxpayers filed an appeal before the Supreme Court. The key takeaways of the decision of Supreme Court are briefly discussed below.

### **Taxpayer's contentions**

- The taxpayers contended that since the NCLT had passed the final order after March 31, 2018, it was impossible to file the revised returns of income before the due date prescribed under section 139(5) of the Act.
- Subsequent to the sanction of the Schemes by the NCLT, the income of the transferor companies merged in the hands of the Transferee Companies with effect from January 1, 2015, being the Appointed Date as the "date of succession" under section 170<sup>1</sup> of the Act. As a result, the Transferee Companies were required to revise the return of income to consider the effect of the scheme while determining the taxability for AY 2016-17. The Schemes contained a specific clause permitting the Transferee Companies to file/revise their returns even if the prescribed time limits for filing or revising such returns have lapsed without incurring any liability on account of interest, penalty or any other sum.
- Despite service of notice of Schemes by the Transferee Companies to income-tax department as mandated under applicable section of the Companies Act, 2013, there was no objection raised by the department.

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<sup>1</sup> Section 170 of the Act provides that in case of succession of business (otherwise than by death) the predecessor shall be assessed in respect of the income of the year in which the succession took place up to the date of succession; and the successor shall be assessed in respect of the income of that year after the date of succession.



## Department's contention

- The Assessing Officer ('AO') contended that the taxpayers had belatedly filed their revised return of income without obtaining permission from the CBDT for condonation of delay under section 119(2)(b)<sup>2</sup> of the Act read with CBDT Circular No. 9/2015<sup>3</sup> dated June 9, 2015.
- The AO also rejected the revised returns of income on the ground that revised returns of income had been filed manually instead of being filed electronically as mandated by Rule 12(3) of the Income-tax Rules, 1962.

## Supreme Court ruling

The Supreme Court allowed revision of return of income for AY 2016-17 after giving effect to the Schemes even though the due date under section 139(5) of the Act had lapsed. The key observations of the Supreme Court are mentioned below.

- The Schemes attained statutory force not only inter se the transferor and Transferee Companies, but also *in rem*, since there was no objection raised either by the statutory authorities, the income-tax department, or other regulators or authorities, likely to be affected by the Schemes. That is to say, the Scheme once approved is binding not only inter-se the amalgamated and the amalgamating companies but also on all parties involved, including the income-tax department.
- The Schemes contained a specific clause permitting the Transferee Companies to file/revise their returns even if the prescribed time limits for filing or revising such returns have lapsed without incurring any liability on account of interest, penalty or any other sum.
- Section 139(5) of the Act was not applicable in the instant case, since the revised returns were not filed on account of an omission or wrong statement. The delay had occurred on account of the time taken by NCLT to sanction the Schemes.
- It was an impossibility for the Transferee Companies to have filed the revised returns of income for AY 2016-17 before the due date of March 31, 2018, since the NCLT had passed the orders granting approval and sanction of the schemes much after March 31, 2018.
- Section 119(2)(b) of the Act is applicable in cases of genuine hardship faced by a taxpayer to admit an application, claim any exemption, deduction, refund or any other relief under the Act, after the expiry of the stipulated period under the Act. This provision would not be applicable where the taxpayer has restructured their business and filed a revised return of income with the prior approval and sanction of the NCLT, without any objection being raised by the income-tax department.
- The purpose of assessment proceedings is to assess the tax liability of an assessee correctly in accordance with law. In view of the provisions of section 170(1) of the Act dealing with succession of business, and decision of Supreme Court in case of Marshall Sons & Co. (India) Ltd<sup>4</sup>, the income-tax department is required to assess the income of the appellants after taking into account the revised returns filed after amalgamation of the companies.

<sup>2</sup> Section 119(2)(b) of the Act empowers the CBDT to authorise any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act for making such application or claim.

<sup>3</sup> CBDT circular no. 9/2015 contains guidelines on the conditions for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set-off thereof and the procedure to be followed for deciding such matters

<sup>4</sup> Marshall Sons & Co. (India) Ltd. vs ITO [1997] 223 ITR 809 (SC)



### **Dhruva comments**

It is quite common for companies to enter into scheme of arrangement with retrospective appointed date, wherein by the time the order of NCLT sanctioning the scheme is received, the due date for filing revised return of income prescribed under section 139(5) of the Act to give effect to the scheme has lapsed. The Supreme Court judgement is a welcome ruling which provides much-needed clarity on permissibility to revise the return of income to give effect to the scheme in such cases. Considering the observations of Supreme Court, it becomes pertinent to ensure that the scheme expressly contains an enabling clause for revision of return of income beyond the statutory timelines. This decision has been given in the context of an amalgamation scheme. One would need to evaluate its applicability in other restructuring situations.



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